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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 999

PEGGY J. CONNOR, *et al.*,

Appellants,

—v.—

PAUL B. JOHNSON, JR., Governor of Mississippi, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

APPELLANTS' BRIEF OPPOSING THE MOTION TO DISMISS

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IN THE

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No. 999

PEGGY J. CONNOR, ANNE E. TAYLOR, AUGUSTA WHEADON, RALTHUS HAYES, CATHERINE CROWELL, HENRY J. KIRKSEY, ELIJAH CONWELL, JR., ALMA CARNEGIE for themselves and others similarly situated, and THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY,

Appellants,

—v.—

PAUL B. JOHNSON, Governor of Mississippi, JOE PATTERSON, Attorney-General of Mississippi, HEBER LADNER, the Secretary of State of Mississippi, WALTER SILLERS, the Speaker of the Mississippi House of Representatives, GEORGE YARBROUGH, the President Pro Tempore of the Mississippi Senate,

Appellees.

APPELLANTS' BRIEF OPPOSING THE MOTION TO DISMISS

Jurisdiction

Appellees apparently contend in their Motion to Dismiss that the exclusive source of jurisdiction over any question whatsoever involving congressional reapportionment lies in

Article I, Section 2 of the United States Constitution. Whether or not this be so in matters dealing only with strict numerical malapportionment, it is clearly not so where discrimination based on race is alleged. In such situations, the Fourteenth and Fifteenth Amendments to the Constitution are the appropriate basis for jurisdiction. See *Gomillion* v. *Lightfoot*, 364 U. S. 339, 342, 5 L. Ed. 2nd 110, 113, 81 S. Ct. 125; *Lane* v. *Wilson*, 307 U. S. 268, 275, 83 L. Ed. 1281, 1287, 59 S. Ct. 872; *Wright* v. *Rockefeller* (dissent), 376 U. S. 52, 68, 11 L. Ed. 2nd 512, 523, 84 S. Ct. 603; *Brown* v. *Board of Education*, 347 U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686.

The Record Filed by Appellants Is Complete

The Appellees point out that the record sent by the Court below to this Court did not include a transcript of the testimony at the trial itself, and in their brief they imply that such failure was deliberate. Quite to the contrary, the Appellants' Notice of Appeal designated *all* of the record, exclusive of briefs of counsel, and anticipated that under Supreme Court Rule 12(2) such entire record would be prepared for transmission to this Court; it was only through inadvertence or misunderstanding, as set forth in the affidavit hereto attached as an Appendix, that the transcript was not filed earlier. All exhibits, deposi-

tions, etc., were filed at the time of docketing the case, and such transcript is now on file before this Court.

Respectfully submitted this 10th day of March, 1967.

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APPENDIX

Affidavit

STATE OF MISSISSIPPI,
COUNTY OF HINDS.

ALVIN J. BRONSTEIN, being duly sworn, deposes and says:

1. That he is an attorney, duly admitted to the Bar of the Supreme Court of the United States, and one of the attorneys of record for the appellants herein;

2. That he is making this affidavit in support of appellants' brief in opposition to appellees' motion to dismiss;

3. That the transcript of the testimony and proceedings before the Court below was not filed with the Clerk of the Court below and transmitted to this Court with the rest of the record due to an inadvertence and misunderstanding in that this affiant believed that one of the other attorneys of record had ordered the transcript;

4. That on or about November 29, 1966, this affiant had a conversation with the Chief Deputy Clerk of the Court below, Mrs. Elizabeth Mathison, who advised this affiant, that we would have to obtain duplicate copies of all the exhibits and other papers in the file of the court below, since the court below had a rule about not releasing its original papers. On December 3, 1966, this affiant received a letter dated November 30, 1966 from Mrs. Mathison, the Chief Deputy Clerk of the court below, in which she enclosed a list of the exhibits and which letter stated:

"As soon as you are able to furnish us with duplications of these exhibits we will then forward the *record* to the Supreme Court." (Emphasis supplied.)

5. That on December 6, 1966 this affiant received a copy of a letter dated December 5, 1966 from Mrs. Mathison to John F. Davis, Clerk of this Court, which letter stated:

"Enclosed are the original *papers* and *certified copies of the above case* on appeal. The exhibits in this case will follow • • • • " (Emphasis supplied.)

6. These letters and the use of the term *record* led this affiant to believe that the transcript had been ordered from the court reporter and forwarded to this Court, and the first notice that this affiant had that this was not the fact was when he received Appellees' Motion to Dismiss or Affirm.

/s/ ALVIN J. BRONSTEIN

Subscribed and sworn to before me
this 7th day of March, 1967.

/s/ SARAH HARVEY STEVENS
Notary Public
My Commission expires:
May 9, 1970

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

CONNOR ET AL. *v.* JOHNSON ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 999. Decided March 27, 1967.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.

MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted and the case set down for argument.